

1 CHIEF JUDGE SIPPEL: The next one, Mr.  
2 Campbell.

3 MR. CAMPBELL: Gulf Power Company offers  
4 Exhibit 79 into evidence, Your Honor.

5 MR. SEIVER: We have no objection to 79,  
6 Your Honor.

7 CHIEF JUDGE SIPPEL: Seventy-nine is  
8 received into evidence as Gulf Power Exhibit No. 79.

9 (The document referred to  
10 having been previously marked  
11 for identification as Gulf  
12 Power Exhibit No. 79, was  
13 received in evidence.)

14 MR. CAMPBELL: Gulf Power Company offers  
15 Exhibit 80 into evidence.

16 CHIEF JUDGE SIPPEL: Exhibit 80. This is  
17 the SEE survey summary. Correct?

18 MR. CAMPBELL: That is correct.

19 CHIEF JUDGE SIPPEL: Any objection?

20 MR. SEIVER: Yes, we do object. We  
21 believe that it's not be authenticated. It's not  
22 reliable and it is not dispositive or relevant to any

1 of the issues that are to be decided in this case and  
2 it's also prejudicial in that it could not be cross  
3 examined as to who prepared it or who offered it. So  
4 we ask that it be excluded.

5 MR. CAMPBELL: Your Honor, this is a  
6 document in response to Mr. Seiver's objection that  
7 Mr. Harrelson had seen before himself. It's a survey  
8 that was prepared in a case where there were experts  
9 on the other side of Mr. Harrelson who disagreed with  
10 his conclusions as a "industry expert." In this case,  
11 he's also testifying as an industry expert. This  
12 document is not offered for the truth of the matter  
13 inserted, but merely to demonstrate the witness's  
14 knowledge or lack of knowledge concerning the industry  
15 standards he's testifying about as an expert in this  
16 case.

17 And as far as reliability, I think he's  
18 questioned about it in his deposition. They've seen.  
19 They had it. So it's not offered for the truth of the  
20 matter.

21 CHIEF JUDGE SIPPEL: I appreciated your  
22 qualification on that, Mr. Campbell, but again this

1 document is just too spotty and I can recall his  
2 spottiness in the sense that it's very cryptic and for  
3 the kind of conclusions that you may be seeking to  
4 draw from this, it's too cryptic for purposes of a  
5 reliable exhibit and the witness did do some  
6 testifying as to it, as to the document, which as I  
7 recall he wasn't quite clear as to who was on the  
8 phone, who was picking it up, who was doing the  
9 answering, or who was asking the questions.

10 So if there's anything that you feel that  
11 you can advance as proposed findings or some  
12 commentary on his ability as an expert through his  
13 testimony that he gave with respect to this document,  
14 I will permit that. But it will go in the record as  
15 for identification only but I'm going to sustain the  
16 objection for the reasons I've given. So this is  
17 rejected on today, May 1. Next document, sir.

18 (The document referred to  
19 having been previously marked  
20 for identification as Gulf  
21 Power Exhibit No. 80, was  
22 rejected.)

1 MR. CAMPBELL: Gulf Power Company enters  
2 into evidence Exhibit 81.

3 MR. SEIVER: Your Honor, if I may ask Mr.  
4 Campbell to explain what he believes the relevance of  
5 this exhibit is besides being shown to Mr. Harrelson  
6 so I can understand whether I need to object to this  
7 or not.

8 MR. CAMPBELL: I think the testimony  
9 speaks for itself. But Mr. Harrelson identified it as  
10 an RUS specification and he was questioned concerning  
11 the spacing between guying cables.

12 MR. SEIVER: Your Honor, RUS  
13 specifications are not at issue here. The RUS  
14 separations and diagrams are not the same as the Gulf  
15 Power/Southern Company diagrams. There was testimony.  
16 If Mr. Campbell needs some comments on this exhibit,  
17 I think he can use the testimony. But otherwise, I  
18 think this exhibit not only not being authenticated  
19 even though it was recognized by Mr. Harrelson is  
20 legally irrelevant.

21 MR. CAMPBELL: Your Honor, it's a  
22 government document. So it's self-communicating to

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1 some extent, but beyond that -

2 CHIEF JUDGE SIPPEL: It's a government  
3 document?

4 MR. CAMPBELL: Yes sir. It's RUS.

5 CHIEF JUDGE SIPPEL: RUS.

6 MR. CAMPBELL: Right.

7 CHIEF JUDGE SIPPEL: Let me ask this  
8 question. Does it pertain to any of the poles that  
9 are the 50 selected by Gulf?

10 MR. CAMPBELL: No Your Honor. It doesn't.  
11 This is on a separate issue. If you recall, Mr.  
12 Harrelson is an industry expert when he came in and  
13 made some commentary, some rather perjorative  
14 commentary about Gulf Power's specifications and he  
15 said that a requirement that they had in particular on  
16 one of those spec plates that required guying be  
17 separated by a distance of four feet was unreasonable,  
18 was arbitrary, that he had never seen it out there  
19 anywhere in the industry and that this was just out of  
20 line.

21 I then asked him about his relationships  
22 with RUS entities and his familiarity with RUS

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1 specifications and he didn't consider this  
2 *specification out there among many others that talked*  
3 on the issue. So it's very relevant. It's relevant  
4 to his knowledge, his lack of preparation to enter  
5 opinions in this case and the error in his opinions.

6 CHIEF JUDGE SIPPEL: What does RUS stand  
7 for?

8 THE WITNESS: Rural Utility Service.

9 CHIEF JUDGE SIPPEL: If I was going to  
10 guess I would have been pretty close to right.

11 THE WITNESS: Formerly, it was REA.

12 CHIEF JUDGE SIPPEL: That's okay. Rural  
13 Utility Services, that's what RUS stands for. It's  
14 one of those documents that would use this cross  
15 examination item and while it may not be directly,  
16 certainly it's not directly relevant to anything that  
17 Gulf Power has put in, I'm sorry. Yes, it's not  
18 relevant with respect to Gulf Power's proffer of the  
19 50 poles, however for cross examination purposes, I'm  
20 going to receive it into evidence.

21 It will be, of course, limited in terms of  
22 its weight and what it can be used for. But I'm going

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1 to use my discretion to receive this. Objection  
2 overruled. The Exhibit 81 identified is received in  
3 evidence at this time.

4 (The document referred to  
5 having been previously marked  
6 for identification as Gulf  
7 Power Exhibit No. 81, was  
8 received in evidence.)

9 MR. CAMPBELL: Gulf Power tenders Exhibit  
10 82 and moves it into evidence.

11 MR. SEIVER: Your Honor, it's a similar  
12 exhibit with a similar objection we have to this.  
13 This is the Department of Agriculture and an REA  
14 bulletin. I think that for the RUS doesn't control or  
15 determine any of the issues with respect to the poles  
16 of Gulf Power as an investor on utilities.

17 The mischief in this is somewhat greater  
18 even than Exhibit 81 is that when we looked at Exhibit  
19 81 we had one document and Mr. Harrelson was  
20 questioned about and even though I disagreed with Mr.  
21 Campbell's characterization of the testimony, for  
22 whatever use he need to make of it fine, but there are

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1 many pages in this document.

2 No one has sponsored this document to say  
3 that it means what it says or says what it means. It  
4 would require in the proposed findings to be  
5 responding perhaps portions of it that nobody's ever  
6 interpreted before. I think there's just too much  
7 mischief in letting the entire document in. Given  
8 that there was limited question of Mr. Harrelson on  
9 things that were included in this exhibit, I believe  
10 having it marked for identification and having his  
11 testimony stand, those particular pages he was  
12 questioned about to the extent that I think it's  
13 relevant could be examined in the proposed findings.  
14 Otherwise, I think this is another one of those  
15 documents not only legally irrelevant but potentially  
16 prejudicial since it contains many pages that no  
17 witness has looked at or discussed.

18 MR. CAMPBELL: We would be happy to redact  
19 all of the information we did not question the witness  
20 about and have a redacted form of the exhibit received  
21 into evidence.

22 CHIEF JUDGE SIPPEL: Rather than do that,



1 what I'm going to do is I'm going to sustain the  
2 objection. It's not going to be received into  
3 evidence, but again as my other one was, that if you  
4 think it's probative you can use whatever the witness  
5 testified to as to this document and you certainly can  
6 refer to the pages that you identified that he did  
7 testify to. But obviously with a ruling like that,  
8 obviously I'm limiting the weight of this evidence and  
9 I agree with everything that Mr. Seiver said and also  
10 my favorite rule of evidence 403.

11 This could be confusing. It's time  
12 consuming and even though some of it may be relevant,  
13 it's too tangential and it's not going to be received  
14 as evidence as a composite document of evidence. So  
15 objection sustain subject to my ruling. The Exhibit  
16 No. 82 for identification is rejected as an exhibit.

17 (The document referred to  
18 having been previously marked  
19 for identification as Gulf  
20 Power Exhibit No. 82, was  
21 rejected.)

22 MR. CAMPBELL: Gulf Power offers Exhibit

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1 83 into evidence.

2 MR. SEIVER: Your Honor, this is another  
3 objection. This is some sort of a PowerPoint.  
4 Hubbell has not testified here. None of the entities  
5 at the bottom have testified here. Mr. Campbell had  
6 his chance to ask Mr. Harrelson whatever questions he  
7 wanted to about the document and locations. Again, I  
8 think this is mischievous document for admission to  
9 evidence as we have no idea who prepared under what  
10 auspices, what standards, what guidelines and it  
11 should not be admitted into evidence in this case  
12 having not been promoted by any Gulf or another  
13 witness.

14 CHIEF JUDGE SIPPEL: Mr. Campbell.

15 MR. CAMPBELL: I think it was simply used  
16 for notice and knowledge document. I don't see the  
17 prejudice. Mr. Harrelson didn't have any problem  
18 testifying from the document. He recognized Hubbell  
19 as the manufacturer of guy anchors on the stand and I  
20 didn't hear him take any issue with the document. It  
21 speaks for itself.

22 CHIEF JUDGE SIPPEL: I'm going to overrule

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1 the objection and I'm going to receive this into  
2 evidence. Again, it's going to be for limited  
3 purposes and there's merit in all the elements of your  
4 objection, Mr. Seiver, but I think under the  
5 circumstances and I think that I can deal with the  
6 weight of these document. I'm going to receive it  
7 into evidence. It certainly was properly used on  
8 cross examination. So it's received on May 1, 2006.

9 (The document referred to  
10 having been previously marked  
11 for identification as Gulf  
12 Power Exhibit No. 83, was  
13 received in evidence.)

14 MR. CAMPBELL: There is no Exhibit 84,  
15 Your Honor and Gulf Power tenders into evidence  
16 Exhibit No. 85.

17 MR. SEIVER: Your Honor, once again this  
18 is an entity that did not, Exhibit 85 is prepared by  
19 an entity that did not appear here, was not offered or  
20 sponsored as an expert document that someone may have  
21 relied on or looked at. It was shown during cross  
22 examination when it was asked and in fact, I did even

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1 do a follow-up question to Mr. Harrelson on it and I'm  
2 quite content to rely on the record as I would think  
3 Mr. Campbell would be too. There are many other  
4 things in here besides the limited items that were  
5 questioned and I think it would mischievous to have  
6 this document come into evidence.

7 CHIEF JUDGE SIPPEL: Well, I'm going to --  
8 This is the Jacksonville Electric Authority.

9 MR. SEIVER: Yes, Your Honor and it's a  
10 municipal authority that's not in Gulf Power's area.

11 CHIEF JUDGE SIPPEL: There has been some  
12 testimony and some evidence with respect to the  
13 municipalities, at least one municipality, that's been  
14 used not as a standard but certainly has been used a  
15 lot by both sides in terms of taking their positions.  
16 I'm going to receive it into evidence. It's subject  
17 to my earlier ruling and I think it was on one of the  
18 earlier exhibits that was -- Yes, that was Exhibit 82.  
19 So basically it's the same ruling with this one.  
20 Anything that he testified to on cross examination and  
21 was pointed to a page and he testified to it will be  
22 considered as cross examination evidence. The rest of

1 the document however will be rejected.

2 So to ease the process what I'm going to  
3 do is reject the document as an exhibit. It is marked  
4 for identification and I've made limited rulings with  
5 respect to how it can or I've made rulings on its  
6 limited use as a proper cross examination on the  
7 specific pages that the witness was asked about.

8 MR. CAMPBELL: So we can rely on the  
9 witness's testimony even if it includes a reference to  
10 this document, but the document is not in evidence.

11 CHIEF JUDGE SIPPEL: The document is not  
12 in evidence, but you referenced him to a page. All  
13 right. It's similar to how you would handle a  
14 deposition that's not in evidence. You reference him  
15 to a page. He testifies to the page. Everything  
16 goes. But again, that's my judgment on the weight,  
17 but I'm looking at this as a cross examination  
18 document. So I'm just giving you a heads up on that.  
19 So again, my ruling is that Exhibit 85 is rejected and  
20 it's essentially a Federal Rules of Evidence 403  
21 ruling.

22 (The document referred to

1                   having been previously marked  
2                   for identification as Gulf  
3                   Power Exhibit No. 85, was  
4                   rejected.)

5                   MR. CAMPBELL: Eighty-six and eighty-seven  
6                   have already been received into evidence. Gulf Power  
7                   moves Exhibit 88 into evidence, Your Honor.

8                   CHIEF JUDGE SIPPEL: All right. Let me  
9                   make a note of this. This is received. Eighty-six  
10                  was received on April 27th. That would be the other  
11                  day that was.

12                  MR. CAMPBELL: Yes, the 27th.

13                  CHIEF JUDGE SIPPEL: And let's see. Let  
14                  me get my next number here. Eighty-seven, that's the  
15                  IHOP photo. That also was received on April 27th.  
16                  Okay. The next one.

17                  MR. CAMPBELL: Exhibit 88, Your Honor.

18                  MR. SEIVER: Your Honor, we have no  
19                  objection to Exhibit 88.

20                  CHIEF JUDGE SIPPEL: Thank you. Gulf  
21                  Power Exhibit 88 identified as 88 and is today  
22                  received as 88.

1 (The document referred to  
2 having been previously marked  
3 for identification as Gulf  
4 Power Exhibit No. 88, was  
5 received in evidence.)

6 CHIEF JUDGE SIPPEL: Eighty-nine must be  
7 the next one.

8 MR. CAMPBELL: Gulf Power moves Exhibit 89  
9 into evidence.

10 MR. SEIVER: We object, Your Honor. This  
11 is rather lengthy and depends on how you want to  
12 count. At least 98 physical pages and it looks like  
13 actually over 100, 115 deposition pages of Mr.  
14 Harrelson in another proceeding and Mr. Campbell did  
15 point his attention to and there was testimony on  
16 document page 80 and Mr. Harrelson went back to 79 and  
17 then we might have even gone on to 81 and if there's  
18 other material in this document that wasn't used for  
19 cross examination then it would be wholly  
20 inappropriate for admission into evidence. And I  
21 think it would be best to keep the entire document out  
22 because I think Mr. Harrelson and Mr. Campbell read in

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1 everything that they wanted to use and so that's in  
2 the transcript and it would be a mischievous document.

3 CHIEF JUDGE SIPPEL: I'm going to sustain  
4 the objection on my discretionary authority to do that  
5 and however, with the same ruling. Anything that he  
6 testified to with the specific pages that he was  
7 directed to and he read back into the record and  
8 answered questions about what he read back into the  
9 record, that's good evidence as cross examination.  
10 The rest of it, technically I'm going to rule it as  
11 being rejected.

12 (The document referred to  
13 having been previously marked  
14 for identification as Gulf  
15 Power Exhibit No. 89, was  
16 received in evidence.)

17 MR. CAMPBELL: Gulf Power Company offers  
18 Exhibit 90 into evidence.

19 CHIEF JUDGE SIPPEL: Any objection on 90?

20 MR. SEIVER: Your Honor, it's a more  
21 limited one in that I think that the question was  
22 limited as a cross examination part to a limited

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1 section of this draft which I think Mr. Harrelson  
2 explained was a draft of his summary and not a draft  
3 of the testimony and I'm not sure that I see the  
4 relevance of that beyond what Mr. Campbell attempted  
5 to establish during his examination of Mr. Harrelson  
6 and for that reason, I think that there's no need and  
7 no relevance to this exhibit beyond what's already  
8 testified to on the record and I would object to it on  
9 that ground.

10 MR. CAMPBELL: Your Honor, credibility and  
11 bias are always relevant. In the drafts and in the  
12 exchanges between Mr. Harrelson and the lawyers in  
13 this case could not be more relevant to that issue.  
14 The issue in this case is whether he's tendering  
15 testimony or they are tendering it through an expert.  
16 He uses a word and then changes his use of the word.  
17 He understands an issue and then doesn't understand  
18 the issue suddenly.

19 So all of these drafts are very relevant.  
20 We've already had this fight by the way in discovery.  
21 They argued that it wasn't relevant and it wasn't  
22 produceable and Your Honor ordered them to produce it.

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1 They produced it. We have it. They knew we would  
2 cross examine on these issues. We did. Credibility  
3 and bias are always relevant.

4 CHIEF JUDGE SIPPEL: All right. I've  
5 heard enough. I think the point that was made on  
6 cross examination I'm very much aware of it and I  
7 think what Gulf Power is seeking to establish with  
8 this evidence that it's best that it be in the record,  
9 the entire document be in the record. It is not that  
10 lengthy. Certainly it is not confusing. It goes  
11 right to the heart of the issues that we're talking  
12 about in this case. So I'm going to overrule the  
13 objection. Gulf Power 90 for identified is received  
14 in its entirety as Gulf 90.

15 (The document referred to  
16 having been previously marked  
17 for identification as Gulf  
18 Power Exhibit No. 90, was  
19 received in evidence.)

20 CHIEF JUDGE SIPPEL: The last one.

21 MR. CAMPBELL: Gulf Power Company offers  
22 Exhibit 91 into evidence.

1 CHIEF JUDGE SIPPEL: Any objection?

2 MR. SEIVER: Yes Your Honor. Again, this  
3 is another set of drafts and pictures and items that  
4 many of which were had by Counsel for Gulf Power for  
5 a length of time and the few that were not could have  
6 been used during the cross of Mr. Harrelson. But I  
7 don't recall anything beyond marking the document and  
8 we've already stipulated to different things that have  
9 been produced, that it would make any difference at  
10 all. Perhaps it's a substitute for cross examination  
11 which I don't think you can do by taking a document  
12 and putting into evidence and then when we get  
13 proposed findings and conclusions find out what he  
14 wanted to say in this particular document that's  
15 either impeaching or means something else because then  
16 I don't have the chance to redirect on Mr. Harrelson  
17 as to this document or any conclusions they're going  
18 to draw from it.

19 CHIEF JUDGE SIPPEL: This is all materials  
20 that the witness had at least in this possession at  
21 one point that if he didn't consider he could consider  
22 it.

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1 MR. SEIVER: Yes Your Honor. Some of it  
2 was considered in different ways. That's why it's so  
3 mischievous to have it come in without any testimony  
4 about because what was done or not done with a  
5 particular document or a particular change or a  
6 particular question is totally left to conjecture and  
7 we'll be spending a lot of time in proposed findings  
8 if Mr. Campbell has this in evidence as saying this  
9 says this and this says that and without cross  
10 examination on the document, I don't want to prolong  
11 the proceeding, but I think the proper way to do it is  
12 you cross examine on a particular document and many of  
13 these are related but not connected. It's not like  
14 it's one document. It's a composite document of a  
15 number of different things.

16 CHIEF JUDGE SIPPEL: Mr. Campbell.

17 MR. CAMPBELL: I can't remember the last  
18 time I've been called mischievous that many times.

19 CHIEF JUDGE SIPPEL: The document, not  
20 you.

21 MR. CAMPBELL: I understand, Your Honor.  
22 We appropriately identified this with the witness as

1 a composite exhibit. It contains documents that he  
2 testified to this morning. I asked him the question  
3 "Did you consider these documents?" The answer was  
4 ultimately "Yes, I considered these documents in  
5 forming my opinion." Some of them are photographs  
6 that we did have in possession before and we will  
7 compare to the photographs that we just got last  
8 Friday and that is one of the reasons we tendered this  
9 exhibit.

10 The other reason is it goes to the heart  
11 of the issues we talked about with respect to Exhibit  
12 90, credibility and bias issues, the exchange of  
13 information between the witness and the lawyers and  
14 how it resulted in the testimony we received in this  
15 case. That is always relevant. There's no prejudice  
16 here because they had the documents long before we had  
17 them and then they produced them to us. They know  
18 what's in there. He relied on them. His testimony  
19 stands on that issue and this is not a 403 situation  
20 and even if it were a 403 situation, it has to  
21 substantially outweigh the relevance and here  
22 credibility and bias are heavy of the relevance scale.

1 MR. SEIVER: Your Honor, in all but the  
2 last few pages are documents they had for a  
3 considerable amount of time and the whole program with  
4 this is exactly pointed out by what Mr. Campbell wants  
5 to do. He said this is all -- It's taking the  
6 document. I'll take the Bible and put that into  
7 evidence that this is an example of the bias and  
8 prejudice of a witness. I don't know what he's going  
9 to do and if he were going to use something, what did  
10 you do with this picture or did you consider that one,  
11 I would agree, all right, that particular item. I had  
12 the chance on redirect to say how that affected him or  
13 was bias or prejudicial or affected his credibility,  
14 but I don't know.

15 CHIEF JUDGE SIPPEL: Did he answer any  
16 questions about this document?

17 MR. SEIVER: No. No, he did not.

18 MR. CAMPBELL: Well he answered questions  
19 that there were emails exchanged as a result of the  
20 drafting process. That was with respect to Exhibit  
21 90. With respect to Exhibit 91, I asked him, "Did you  
22 consider these documents in forming your opinions in

1       this case?" On that ground alone, it's relevant.

2               MR. SEIVER: Your Honor, we have thousands  
3 of documents that every witness may have considered or  
4 would agree to have considered and we're not going to  
5 put them all into evidence unless we question them  
6 about them.

7               CHIEF JUDGE SIPPEL: I think it is  
8 relevant in terms for the fact that he was provided  
9 certain information from Mr. Cook and if he had  
10 received the information from Mr. Cook presumably he  
11 considered it one way or the other. He either  
12 accepted it or rejected it or just never bothered  
13 using it. So I will permit Counsel to use this;  
14 although again it's going to go in as a rejected  
15 exhibit. But you can refer to it, anything that was  
16 a communication from Mr. Cook to Mr. Harrelson and you  
17 can specify or list or itemize the materials that went  
18 along with the communication for whatever it's worth.

19              MR. CAMPBELL: Your Honor, just a  
20 clarification on that. This is a composite exhibit.  
21 It just doesn't contain items from Mr. Cook to Mr.  
22 Harrelson. It also contains for example the second

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1 document, communication from one of the Complainants  
2 in the case to Mr. Harrelson. You will recall we  
3 asked for permission to bring the Complainants to the  
4 proceeding to cross examine them about certain issues.  
5 This would be one of them. So it's not just the flow  
6 of information from Counsel to expert, but also the  
7 flow of information from the Complainants to expert  
8 and how he used those things to funnel down -- Can I  
9 please finish, Mr. Seiver?

10 MR. SEIVER: Only if you don't make -

11 CHIEF JUDGE SIPPEL: Wait. Wait. This is  
12 the last exhibit. We're doing very well. Go ahead,  
13 Mr. Campbell. Finish your point.

14 MR. CAMPBELL: My point is that the flow  
15 of information from Complainants to Mr. Harrelson  
16 whether that happens through lawyers and then to Mr.  
17 Harrelson or from the lawyers themselves or Mr.  
18 Harrelson when the Complainants are present, all of  
19 that is relevant considering how this expert took that  
20 information at the top of funnel and gave us the  
21 opinions that came out of the bottom of the funnel and  
22 the documents that are contained in this stack do just

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1 that, the pictures of the Complainant's poles, the  
2 data transmitted to him, whether it came to Mr. Seiver  
3 first and then to him, they speak for themselves and  
4 we have a right to have the information that he says  
5 he relied on just this morning. He didn't have a  
6 problem with this stack of documents and it's  
7 relevant. It comes into evidence.

8 MR. SEIVER: He didn't have a problem with  
9 the stack of documents because he got handed that and  
10 asked about the top memo, Your Honor, and I wanted to  
11 point out what got me worked up a little bit was on  
12 the second page, this was a document prepared by Mr.  
13 Burgess and it was given to Mr. Cook, Mr. Harrelson  
14 and Mr. Shaw.

15 These are all people that are associated  
16 either with this case as lawyers or with Brighthouse  
17 up in New York and the problem is that this exhibit,  
18 this particular field summary report, was given a long  
19 time ago to Gulf and they testified and made it an  
20 exhibit. I mean testified. Mr. Burgess testified  
21 about it because it was an exhibit at his deposition.  
22 There is nothing surprising here. If there was a